

DOCKET FILE COPY ORIGINAL

RECEIVED

DEC 16 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:)
Inquiry into Policies and Programs to)
Assure Universal Telephone Service in a)
Competitive Market Environment)

RM 8388

**COMMENTS OF THE
UNITED STATES TELEPHONE ASSOCIATION**

Martin T. McCue
Vice President & General Counsel
1401 H Street, NW
Suite 600
Washington, DC 20005
(202) 326-7247

December 16, 1993

No. of Copies rec'd
List ABCDE

04/10
CCB

SUMMARY OF COMMENTS

USTA agrees that the Commission should examine the impacts of competition on universal service, and should take action to assure the continuation of universal service in an era of expanding access and local competition. USTA differs with MFS in part on why the Commission should act, and on the procedure that should be undertaken to obtain the best result. USTA notes here that the full burden and responsibility of providing universal service must be understood. Universal service structures must conform to the fact of competition. In addition, universal service support must accept the impact of technology and be grounded in equitable and nondiscriminatory application of fundamental economic principles.

The Commission should take action to: (1) identify the nature of all support flows, implicit as well as explicit, (2) reassess today's mechanisms to assure continuation of necessary universal service support flows, and equitable distribution of support responsibilities among all industry participants, and (3) move ahead promptly and without delay on the issue of access reform.

USTA believes a proceeding on universal service issues can proceed concurrently with access reform. Regardless of the form of a proceeding, the Commission should commit to move aggressively to deal with both access reform and the resolution of the complex universal service issues raised by commenters here, in a way that will be implemented within the Public Policy category of a revised access structure. It should countenance no delays.

TABLE OF CONTENTS

SUMMARY OF COMMENTS	i
I. USTA HAS CONSISTENTLY SUPPORTED A BALANCED UNIVERSAL SERVICE POLICY DEALING WITH UNIVERSAL SERVICE SUPPORT, A POLICY THAT REQUIRES CONTINUING ATTENTION	2
II. ACCESS REFORM SHOULD PROCEED WITHOUT DELAY REGARDLESS OF THIS PETITION	5
III. COMPREHENSIVE REVIEW OF UNIVERSAL SERVICE SUPPORT ARRANGEMENTS WILL SERVE THE PUBLIC INTEREST	8
IV. CONCLUSION.	14

POCKET FILE COPY ORIGINAL

RECEIVED

DEC 16 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)
Inquiry into Policies and Programs to)
Assure Universal Telephone Service in a)
Competitive Market Environment)

RM 8388

**COMMENTS OF THE
UNITED STATES TELEPHONE ASSOCIATION**

The United States Telephone Association (USTA) respectfully submits these Comments on the Petition of MFS Communications Company, Inc. (MFS) for a Notice of Inquiry and An En Banc Hearing, filed November 1, 1993 (Petition). The Petition was placed on Public Notice on November 16, 1993.

USTA and MFS agree on the bottom line issue - that the Commission should examine the impacts of competition on universal service, and should take action to assure the continuation of universal service in an era of expanding access and local competition. We differ in part on why the Commission should act, and on the procedure that should be undertaken to obtain the best result. USTA agrees that the Commission should take action to: (1) identify the nature of all support flows, implicit as well as explicit, (2) reassess today's mechanisms to assure continuation of necessary support and equitable distribution of support responsibilities among all industry participants, and (3) move ahead promptly and without delay on the issue of access reform, so that the results of a proceeding on universal service can be implemented within the Public Policy category anticipated by USTA's access reform proposal. USTA's concerns and the concerns identified in the Petition are addressed below.

I. USTA HAS CONSISTENTLY SUPPORTED A BALANCED UNIVERSAL SERVICE POLICY DEALING WITH UNIVERSAL SERVICE SUPPORT, A POLICY THAT REQUIRES CONTINUING ATTENTION.

The issues related to universal service are complex and interrelated. There are a number of universal service support mechanisms, involving both explicit carrier and customer support, and various implicit support flows that are often taken for granted. Universal service support issues run far more broadly than the universal service fund itself, which is limited to recovering identified high costs over 115% of the nationwide average. From a jurisdictional standpoint, the main benefit is recovery in the interstate jurisdiction of some of the costs that would otherwise have to be recovered in the intrastate jurisdiction, and most likely in local rates.

USTA is not a newcomer to addressing universal service issues. USTA has consistently supported the establishment of an appropriate balance of universal service support flows to individuals needing such support and to the carriers who are responsible for the provision of basic telephone services in areas that are rural, remote, or otherwise high cost. In those areas, it tends to be only a single local carrier who has the willingness - and the burden - of providing the level of service that is contemplated by the Communications Act (Act) and relevant state statutes.

USTA shares with MFS the fundamental commitment to maintenance of universal service. USTA has been a leader in dealing with universal service issues. USTA agrees that the Commission should act and act promptly, because the change in the access marketplace is fundamental, inexorable, and ultimately will be unforgiving

if action is not forthcoming. USTA's commitment to universal service is no different now than it was in the past. It is continuing.

USTA was active when the universal service fund was initiated as an external support mechanism to replace some of the internal industrywide settlements processes that predated divestiture and the very existence of Part 69.¹ USTA was one of the proponents of the revised universal service fund proposal adopted by the Joint Board and the Commission in 1986-87.² USTA was active in the reassessment of universal service provisions during the subsequent separations reform activities.³ USTA has strongly advocated universal service issues over the past year as study area sales and exchanges have more fully uncovered the need for Commission recognition of implicit

¹ MTS-WATS Market Structure, CC Docket No. 78-72, Third Report and Order, 93 FCC 2d 241 (1983); Supplemental Order, 94 FCC 2d 852 (1983); recon. 97 FCC 2d 682 (1983); recon. 97 FCC 2d 834 (1984); affirmed in principal part and remanded in part, NARUC v. FCC, 737 F.2d 1095 (D.C.Cir. 1984), cert. den. 469 U.S. 1227 (1985), mod. on further recon, 99 FCC 2d 708 (1984), further recon., 101 FCC 2d 1222 (1985), Memorandum Opinion and Order, 102 FCC 2d 849 (1985).

² MTS and WATS Market Structure, CC Docket Nos. 78-72 and 80-286, Recommended Decision and Order of the Federal-State Joint Board, 2 FCC Rcd 2324 (1987); Report and Order, 2 FCC Rcd 2953 (1987); Memorandum Opinion and Order on Reconsideration and Order Inviting Comments, 3 FCC Rcd 4543 (1988); affirmed, Public Service Commission of the District of Columbia v. FCC, 897 F.2d 1168 (D.C.Cir. 1990).

³ Amendment of Part 67 (New Part 36), CC Docket No. 86-297, Report and Order, 2 FCC Rcd 2639 (1987), recon. granted in part, Order on Reconsideration and Supplemental Notice of Proposed Rulemaking, 2 FCC Rcd 5349 (1987); Order on Further Reconsideration and Supplemental Notice of Proposed Rulemaking, 3 FCC Rcd 5518 (1988); affirmed, Public Service Commission of the District of Columbia v. FCC, 906 F.2d 713 (D.C.Cir. 1990).

support flows within exchange carrier operations.⁴ USTA has emphasized the social concerns involved in expanded network accessibility during the implementation of the Americans with Disabilities Act of 1990.⁵ And, most recently, USTA has developed a comprehensive proposal for access reform that will accommodate universal service concerns within the access and related rules.⁶ USTA simultaneously set out an estimate of the implicit industry support flows that contribute directly to the continuation of universal service, but that are often taken for granted.⁷

The petition for rulemaking filed by USTA on September 17, 1993, set out a framework that will accommodate a balanced universal service support structure. It anticipates the institution of a Public Policy category within the access pricing rules to accommodate any element(s) implemented with respect to all identified public policy-related support flows that are necessary. Such a rule structure would be put in place

⁴ Citizens Utilities Part 36 Waiver, 7 FCC Rcd 8656 (1992); Utah-Wyoming Telecom, Kansas-Woodland Telephone, All West Communications Joint Petition for Waiver, 8 FCC Rcd 2557 (1993); US WEST and Wiggins Telephone Assn., 8 FCC Rcd 6229 (1993); US WEST, Range Telephone, et.al., 8 FCC Rcd 6226 (1993); Golden West Telephone Cooperative, 8 FCC Rcd 6325 (1993).

⁵ Implementation of the Americans with Disabilities Act of 1990, Report and Order and Request for Comments, 6 FCC Rcd 4657 (1991); Order, 8 FCC Rcd 5172 (1993); Telecommunications Relay Services and the Americans with Disabilities Act of 1990, CC Docket No. 90-571, Notice of Proposed Rulemaking, 5 FCC Rcd 7187 (1990); Third Report and Order, 8 FCC Rcd 5300 (1993); Memorandum Opinion and Order, 8 FCC Rcd 6160 (1993).

⁶ In the Matter of Reform of the Interstate Access Charge Rules, RM 8356, filed by USTA on September 17, 1993.

⁷ See The \$20 Billion Impact of Local Competition in Telecommunications, by Calvin S. Monson and Jeffrey H. Rohlf, Strategic Policy Research, July 16, 1993 (USTA-SPR Support Flow Study).

in part to assure that all carriers can deal with public policy issues in similar ways, and to reinforce the commitment of government to assure that the public policy goals of the Act are achieved. Statements and replies have been filed with respect to that USTA petition, and it is ripe for Commission action.

Over the past decades, the Commission, state regulators, USTA and others in the exchange carrier community together have sought equitable, effective and administratively efficient means to target explicit universal service support. Such efforts have been ongoing. They do not simply appear in formal dockets, reach an identified goal, and then end. The reality of universal service is that it requires constant vigilance and real work. USTA welcomes MFS to the group of carriers who are willing to share that commitment and work. We read the Petition as a pledge by MFS to join a longstanding national work effort. It is important that there be recognition as to what that work effort entails, and the costs involved.

II. ACCESS REFORM SHOULD PROCEED WITHOUT DELAY REGARDLESS OF THIS PETITION.

Notwithstanding any decision on the MFS Petition, access reform in the manner suggested by USTA should proceed promptly. No action of the Commission in response to the MFS Petition should hold up fundamental access reform. There is no need to wait, because the USTA framework is flexible enough to accommodate multiple universal service solutions.

Competitive access service issues require expeditious treatment of USTA's access reform proposal. Structural reforms are required in the handling of interstate access to address the technological changes that have taken place and that are

continuing to occur. A sophisticated customer who seek to gain the benefits of digitized bits and optical fiber will not wait for the Commission to decide whether an exchange carrier can or cannot respond to its inquiries about new service capabilities. That customer will see who is available to deliver the product, and will choose one of those who are willing and able to act. Delay or inaction on access reform is inappropriate and will not serve the public interest. The Commission should move forward - even this year - and complete action as early as possible in 1994. This will put in place a structure that will accommodate the results of a universal service proceeding.

Public policy issues, such as those related to universal service, can be investigated separately but concurrently with the implementation of access reform. The Public Policy category set out in USTA's access reform proposal is flexible in its capability to accommodate rate elements associated with any universal service recovery mechanisms that the Commission may adopt over time. Every aspect of universal service support tied to access could be handled within the Public Policy category, including those aspects of access pricing that may be related to lifeline support, residual interconnection charges, universal service fund, telecommunications relay services, long term support, and any procedure adopted to generate substitute funding for internal or implicit support flows.

USTA's proposed Public Policy category could accommodate access competition by dealing with contributors in an evenhanded and nondiscriminatory manner, and could operate to continue to funnel adequate revenues produced for

support flows to any areas which will remain high cost areas notwithstanding the expansion of access competition.

In particular, an access rulemaking on USTA's Petition could proceed simultaneously with a parallel universal service proceeding based on the general issues related to the MFS Petition. Thus, there is no need to take action in the nature of what MFS proposes and to simultaneously forego access reform. That would manifestly defeat the public interest. Current rules continue to limit the options that can be made available by exchange carriers to customers, and tolerate an imbalance in the flow of support across the industry. As a result, they operate to favor new access service providers over the exchange carriers - businesses that have consistently delivered superior and universal service, including service to those whom no one else has sought to serve. In contrast, there would be no such imbalance if universal service-related support were generated in an evenhanded and nondiscriminatory manner. The Commission should act to expand the base of contributors to achieve a balanced and stable foundation for a competitive environment.

The Commission should reject any suggestion of delay that may arise here. It should elect instead to commence access reform immediately, and to conclude it promptly. During that rulemaking, it should act to restructure and reform its access rules, and utilize the concept of a Public Policy category with those rules to accommodate any formula for the generation and allocation of universal service support flow responsibilities that is adopted in a separate proceeding or proceedings, and that ultimately will apply to all market participants.

The Commission should not allow the Petition or any response to it to delay needed reform in interstate regulation.

While en banc hearings can be of value in certain areas, as was the case recently with assessments by the Commission of areas involving communications fraud, an en banc hearing in this area may not act to expedite a balanced result.⁸ It can have value if it heightens public awareness of all of the issues involved, expedites action rather than delays it, and does not "politicize" the matter. Maintenance of universal service in an age of competition is too significant an issue to allow the result to depend heavily on non-substantive concerns. Whatever the procedure adopted by the Commission, there should be no delay. Further, the Commission should tolerate no attempt to interpose additional obstacles to access reform.

III. COMPREHENSIVE REVIEW OF UNIVERSAL SERVICE SUPPORT ARRANGEMENTS WILL SERVE THE PUBLIC INTEREST.

A full universal service assessment is needed for a number of reasons:

The Full Burden and Responsibility of Providing Universal Service Must Be Understood. The MFS Petition fails to address many of the core issues related to universal service. There appear to be assumptions made that all universal service issues can be solved by addressing exchange carrier cost allocation, entry barriers in the states and retargeting of the universal service fund. If these are the assumptions,

⁸ Significant work is already underway to identify various views on universal service issues. NARUC has decided to circulate a questionnaire seeking responses on the subject, while the NTIA is in the process of conducting field hearings in various states.

they are incorrect, as there are other universal service issues beyond the scope of the MFS Petition.

In a time of increasing access competition, regulators cannot assume that one group of carrier competitors can remain obligated as carriers of last resort to continue to provide, operate, maintain and improve their significant portion of the interstate access infrastructure and to serve their competitors, too, while similarly-situated competitors provide their services without any such obligations. Such asymmetry necessarily erodes the economic underpinnings of any structure that anticipates a carrier of last resort. Explicit support is made available today to recipients because they fit the criteria for receipt, not because of any trick or artifice. The carrier of last resort concept requires close examination within any proceeding dealing with universal service.

Conversely, the "legal and practical" barriers identified by MFS (Petition at 1-2) have not prevented MFS and other CAPs from gaining access to the high volume customers in places like New York, Washington, Los Angeles, Chicago, Atlanta and San Francisco. Thus, it is disingenuous for MFS to claim that those barriers prevent access to the low volume customers there. It is doubtful that the availability to a CAP of such mechanisms as DEM weighting and pooling would cause a groundswell of new initiatives to enter rural Wyoming, southern Colorado or west Texas. MFS has sought out the high volume customer for the same reason that Willie Sutton said he robbed banks - because "that's where the money is."

The issue of implicit support is a significant one.⁹ Access charges that are set at levels that are higher than the levels that would be produced in a competitive marketplace, to provide support for other services, provide one kind of implicit support.¹⁰ Likewise, cost averaging between a low cost, high volume customer base and a high cost, low volume customer base provides a form of implicit support. Regulators have assumed that the providers of implicit support would have no overriding factors that could put their ability to generate those support flows in jeopardy, or indeed, to threaten the underlying viability of the basic business.

Carriers were allowed - even required - to deviate from cost-based pricing to the extent necessary to achieve the public policy expectations of regulators regarding reasonable pricing of telephone service. Regulators did not demand the strict application of cost causation principles so that their identified social ends could be achieved. The assumptions that allowed such regulatory policies no longer prevail.

Universal Service Structures Must Conform to the Fact of Competition. A full assessment is needed to assure that the fundamental underlying economics of service provision that must guide access competition into the next century can truly emerge and stabilize. Those economic principles play no favorites.

The increasing rate of change in the industry is illustrated by the expansion of interexchange carriers and others into access-related markets, and the diversification of

⁹ See the USTA-SPR Support Flow Study.

¹⁰ Such services can include network services such as intrastate toll and carrier access, or other services like touch tone or supplemental services. Typically, it is residential access service that is subsidized.

many who had previously foregone carrier activities.¹¹ AT&T's acquisition of McCaw, cable operator expansion into delivery of two-way services over cable networks, the developing consortia of cable multiple systems operators, the new growth of additional CAPs, and the emergence of interexchange carrier-CAP-cable MSO alliances each suggest that there will be an erosion for exchange carriers in the core areas of telephony that sustain universal service through implicit subsidies.

In the face of this change, action must be taken to assure that universal service will survive and prosper. It is not necessarily self-sustaining. At this time it appears that there are, and will continue to be areas of the country where support will remain needed to assure that telephone penetration rates will remain at current rates or improve further. A balanced arrangement to generate revenues for universal service can be developed that does not differentiate among carriers who provide similar services and that will achieve the public interest in continued universal service. As MFS acknowledges, assurance of universal service remains the single most significant public policy issue that the Commission will have to address in the face of expanding local competition.

¹¹ See Reply Comments of USTA in In the Matter of Reform of the Interstate Access Charge Rules, RM 8356, at 21-26, and particularly at 22. USTA noted that, at that time, requests for collocation had been made for access to 957 exchange carrier central offices, serving eighty percent of the industry's total access traffic.

See also USTA Reply Comments filed December 8, 1993, in In the Matter of Expanded Interconnection with Local Telephone Facilities, CC Docket No. 91-141, referencing a recent ex parte filing of Pacific Bell and Nevada Bell covering the nature of competition in the California market. That filing showed that 85% of business calling revenues come from customers in 5% of the state, and it breaks down the call volumes and competitive exposure of Pacific Bell in a number of ways.

Universal Service Policy Must Accept the Impact of Technology. Technology has erased the economic limitations that prevented widespread growth of competition. Technology has changed the economics of the business.

As USTA stated recently in its filings in seeking depreciation reform,¹² technology and market forces are rapidly reducing the useful lives of carrier plant investment, requiring carriers to decide whether they must make new investment more rapidly, to deliver newly-available service benefits to their customers, and, of equal significance, simply to keep those customers in the face of new and unencumbered competition. Those impacts are occurring across the spectrum of regulation.

Universal Service Support Can Be Longlasting Only If It Conforms with Fundamental Economic Principles. Much of what is set out above is closely tied to the application of fundamental economic principles. Those principles require that prices be driven closer to cost in a competitive marketplace, and that support

¹² Simplification of the Depreciation Prescription Process, CC Docket No. 92-296, Report and Order, released October 20, 1993. USTA filed a petition for reconsideration on December 3, 1993.

mechanisms not be subject to evasion.¹³ Public policy support should come from the entire public.

Competitors who cannot or will not move their prices to the actual cost of a service must lose market share and profitability over time, absent some compelling service feature that overcomes that pricing disadvantage. In the interstate access market, we are seeing the inexorable application of those economic principles. Regulation that fails to adjust to these realities is not neutral; it operates affirmatively to harm the basic telephone business that is being regulated.

Universal service issues do in fact need to be addressed comprehensively, as USTA has argued. It does no good to evaluate the level of support alone if both the implicit and explicit support flows that are required to be generated must originate from only one of a similarly-situated group of competitors.

The rapid growth of access competition affects all exchange carriers' abilities to maintain universal service, whether they receive support for their high cost areas or favored services, or generate support flows from their low cost areas or access services that are perceived to have "deep pockets." This is the case with both explicit and implicit support flows.

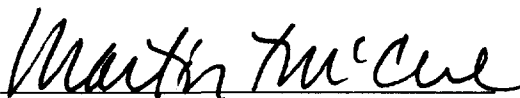
¹³ USTA explained the need to obtain telecommunications relay service support from all providers in comments that led to the Commission's Third Report and Order in Telecommunications Relay Services and the Americans with Disabilities Act of 1990, CC Docket No. 90-571, 8 FCC Rcd 5300 (1993). There, Congress had decided, explicitly and correctly, that interstate relay funding should come from "all customers for every interstate service." That conclusion is normally going to apply to all other public policy-related support issues.

IV. CONCLUSION.

There are many issues to be addressed and questions to be resolved with regard to universal service. The questions and issues extend beyond those limited questions articulated in the MFS Petition. Proper resolution of universal service concerns in an era of competition requires careful and close study, but it remains essential that the Commission not let itself become enmeshed in unproductive or otherwise dilatory work. Whether the Commission initiates a rulemaking or an inquiry on universal service in response to the MFS Petition is not as significant as the Commission making a firm commitment to move aggressively to deal with both access reform and the resolution of the complex universal service issues raised by commenters here, in a way that will be implemented within the Public Policy category of a revised access structure.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

By: 

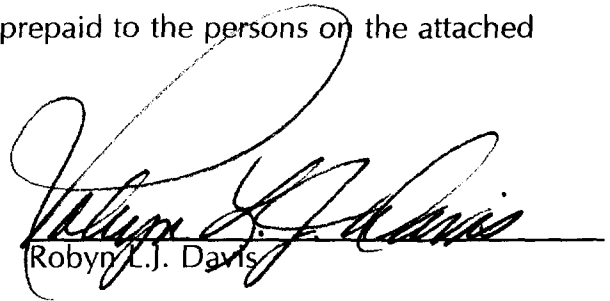
Martin T. McCue

Vice President and General Counsel
1401 H Street, N.W. - Suite 600
Washington, D.C. 20005-2136
202-326-7247

December 16, 1993

CERTIFICATE OF SERVICE

I, Robyn L.J. Davis, do certify that on December 16, 1993 copies of the Comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.



Robyn L.J. Davis

Cindy Schonhaut
Metropolitan Fiber Systems
3000 K Street, NW
Suite 300
Washington, DC 20007

International Transcription Service
2100 M Street, NW
Suite 140
Washington, DC 20554